IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/10/2003

CORAM

THE HON'BLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.No.2368 of 1997

Vanavil Dyes & Chemicals Ltd.,
498 Anna Salai, Karumuttu Centre
III Floor, Nandanam
Madras 35
rep. by the Manager
Commercial Operation .. Petitioner

-Vs-

1. The Joint Secretary (Revision Application)
Govt. of India
Ministry of Finance
Department of Revenue
New Delhi 110 001

2. Maritime Collector
Office of the Collector of
Central Excise (Export claims)
'Sire Mansion'
621, Anna Salai
Madras 6.

3. The Collector of Central Excise
121, Nungambakkam High Road
Madras 600034 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of writ of Certiorarified mandamus as stated therein.

For Petitioner: Mrs.L.Maithili

For Respondent: Mr.K.Veeraraghavan
Addl. Central Govt. Standing
Counsel

:ORDER

Challenging the order of the first respondent in his order No.147/9 6 dated 4.11.1996, the petitioner seeks for a direction to the first respondent to refund the sum of Rs.6,84 590/- being the claim of rebate of duty due in terms of order in appeal No. 133/94(M) dated 16.5.1994 of the third respondent.

2. The petitioner is a public limited Company having its manufacturing unit and registered office at Kuldikadu, Sipcot Post, Cuddalore. It cleared a quantity of 2000 kilograms of Cresol Chloride on payment of excise duty of Rs.5,35,500/-under GPI No.20 dated 29.12.90 to its consignee called M/s.Colour Chem,Thane. Since M/s.Colour Chem was entitled for making MODVAT claim, it took credit of the excise duty paid by the petitioner in their RG 23A Part II account as an input. It is stated that subsequently M/s.Colour Chem, returned and resold the entire quantity of 2000 kilograms of Cresol Chloride on 10.11.19 92 and cleared the same by applying for necessary permission under Rule 57F(1)(ii) of the Central Excise Rules under GPI NO.74 on payment of excise duty of Rs.6,90,000/-. As contemplated under Rule 173H of the Central Excise Rules, the petitioner is stated to have filed the necessary D3 intimation on 21.11.1992 for the refund of excise duty and for bringing it to the factory or warehouse of duty paid goods.

3.It is relevant to mention at this point of time that the purport of the permission to be obtained under Section 57F(1)(ii) as well as under Rule 173H are to ensure that the very same goods, which suffered excise duty at the time of first sale and at the time of its return to the consignor continue to retain its original status. In fact the procedure prescribed under Rule 173H, when strictly applied should ensure such a position in relation to the status of the goods transacted between the parties. In the case on hand, since the return of the goods by the consignee to the petitioner took place after a period of one year by virtue of the provisos to Rule 173H, it was incumbent upon the Collector to make a thorough check while extending the period specified in the first proviso, for granting permission under Rule 173H. Such permission under Rule 173H is stated to have been issued by the competent authority on 20.11.1992, which was communicated to the petitioner on 30.12.1992. Thereafter, the goods after its reprocess were stated to have been exported by the petitioner along with further quantity of 5000 kilos of Cresol Chloride. Therefore in all 7000 kilos of Cresol Chloride was stated to have been exported by the petitioner. Since 2000 kilos of Cresol Chloride covered by the transaction had already suffered excise duty, at the time of export, duty was paid only in respect of 5000 kilos of Cresol. It was only thereafter the petitioner filed a claim under Rule 12 on 11.1.1993 for rebate of Rs.6,84,590 being the duty payable on 2000 kgs of Cresol Chloride, which was paid by M/s. Colour Chem Limited at the time of clearance of the said goods on 10.11.1992.

4. The petitioner's claim in so far as it related to 5000 kilos of Cresol Chloride was accepted. However, in respect of the claim for rebate of Rs.6,84,590 relating to the 2000 kilos was concerned, a show cause notice was issued on 21.9.1993 calling upon the petitioner to show cause why its claim should not be rejected for certain stated reasons. The petitioner filed its reply on 8.10.1993 and thereafter the second respondent by its order dated 20.12.1993 rejected the petitioner's claim for rebate of Rs.6,84,590/- on the ground that 2000 kilos of Cresol Chloride with respect to which the said rebate was claimed was not in its original condition as required under

Notification Number 197/62. The petitioner preferred an appeal before the third respondent and by order dated 16.5.1994 the appellate authority accepting the contentions of the petitioner allowed the appeal and granted the consequential relief of rebate.

5. After the order of the appellate authority dated 16.5.1994, the Department is stated to have filed an appeal before the the Customs, Excise and Gold (Control) Appellate Tribunal, Madras on 12.8.1994. It is common ground that as against the order of the appellate authority dated 16.5.1994 only Revision lies before the first respondent that too only on the question of law and not on facts. It is stated that the Department preferred a revision before the first respondent dated 6/10.10.1994, which was received in the office of the first respondent on 10.10.1994. Under Section 35EE of the Act, any such revision should be filed within three months from the date of service of the order and necessary powers have been vested with the first respondent to accept the revision beyond the period of initial three months for satisfactory reasons within a further period of three more months.

6. It is not in dispute that the department's revision petition before the first respondent which was belated at that point of time was not accompanied with any application for condonation of delay. As against the order of the appellate authority dated 16.5.1994, the time for filing the revision is stated to have expired on 20th August 19 94. Therefore as on 10.10.1994 when the revision was lodged with the first respondent there was a delay of 51 days in filing the said revision petition. Nevertheless, the first respondent passed his orders on 9.8.1995 in No. 27/95 allowing the revision filed by the department and restored the order of the second respondent disallowing the claim of the refund of Rs.6,84,590/-.

7. Aggrieved against the said order, the petitioner preferred writ petition in W.P.No.16769 of 1995. The said writ petition came to be disposed of by His Lordship Mr.Justice A.R.Lakshmanan, as he then was, on 23.2.1996. The learned Judge was pleased to hold that the disposal of the revision application without giving any opportunity to the petitioner to put forth his objection on the question of maintainability of the application under Section 35EE (4) cannot be countenanced, that the reasons given by the first respondent in entertaining the revision without assigning any reasons was not at all satisfactory and hence the revision as presented was not admissible having been filed beyond the statutory period of three months. Accordingly, the learned Judge passed the following order :-

" 19. This apart, it is also contended that the revision can only be on question of law and not on questions of fact. No reasons have been given by the first respondent to differ from the appellate authority's view. Therefore, I set aside the order impugned in toto and remit the matter to the 1st respondent for fresh consideration on the question of maintainability of the revision application and also on merits. The first respondent shall return the papers filed in the form of revision to the 3rd respondent with liberty to represent the same with an application under the Proviso to Section 35EE (2) of the Act. On receipt of such application, the 1st respondent shall give an opportunity to the petitioner to put forth their objections on the question of delay and then decide the matter after affording sufficient opportunity to both parties either to appear in person or through their counsel. The writ petition is allowed as indicated above. No costs."

(Emphasis added)

8. After the order of the learned Judge dated 23.2.1996, it appears that the Department instead of re-presenting the returned revision petition filed a fresh review application before the first respondent on 13.5.1996 along with an application for condonation of delay of 51 days in filing the said revision petition. Thereafter, the petitioner was issued with a notice dated 12.6.1996 as to the entertaining of the fresh revision petition filed by the department. The petitioner is stated to have submitted its reply on 23.7.1996 and that as per the direction of this Court, the petitioner was also permitted to be represented by its counsel. In the hearing, which took place before the first respondent, the contention of the petitioner was two fold. In the first place, it was contended that since the department came forward with a fresh revision petition and have not chosen to represent the one filed earlier , which alone was directed to be carried out by this Court in its order 23.2.1996, the delay as of the date of filing of the fresh petition would be more than two years and therefore, the first respondent lacked jurisdiction even to entertain the application for condonation of delay. It was then contended that in any event since there was no question of law involved in the revision petition, the same was not maintainable.

9. The first respondent has now passed the impugned order dated 4.1 1.1996 rejecting both the contentions of the petitioner holding that though technically the applicant Commissioner committed an error by filing a revision application afresh, it was to be ignored and that original date of presentation of the revision in the earlier application dated 6/10.10.1994 can be taken for fixing the date of filing. On that basis the first respondent held that since the appeal was wrongly filed on 12.8.1994 before the CEGCAT and since that was well within the time, the inadvertent filing of the said appeal, instead of appropriate revision under Section 35EE can be taken note of to cover the period of delay of 51 days involved in filing the revision. On that footing the first respondent chose to condone the delay and dealt with the case on merits. So far as the said part of the order condoning the delay is concerned as held by the first respondent the Department should have only re-presented the revision filed by it originally on 6.10.1994.

10. The learned counsel for the petitioner would fairly state that even in the grounds raised in the fresh revision petition filed by the Department, no new grounds were added but substantially the very same grounds which were raised in the earlier revision petition dated 6/10.10.1994 were alone reproduced. In such circumstances, though technically it can be held that the fresh revision now filed by the Department cannot be construed as the one filed on 6.10.1994, I am of the view that when once the first respondent has exercised its discretion on that aspect and chosen to accept the revision by condoning the delay, such an exercise of power by the first respondent need not be probed into further as even as a matter of fact the filing of the revision on 6/10.10.1994 by the Department was never in controversy. Therefore, I do not propose to concentrate muc h on that aspect.

11. When the order of the first respondent on merits is considered, I find that the first respondent has virtually failed to carry out the exercise as directed by this Court in the order dated 23.2.1996. While disposing of the earlier writ petition, it has been sufficiently indicated by His Lordship that the revision application under Section 35 EE of the Act could be only on the question of law and can never be on questions of fact. When such being the legal position with regard to revision petition filed

under Section 35 EE of the Act and when the earlier proceedings under Rule 57 F as well as 173 H of the Central Excise Rules continue to remain without having been varied at the instance of the Department, if at all there could have been any scope for revision, that could be purely on a question of law above. But a perusal of the order of the first respondent discloses that he has miserably failed to apply his mind to concentrate on that issue, rather has unfortunately committed a grave error by commenting upon the order of this Court dated 23.2.1996, which is totally unwarranted and unpardonable. When scrutinising the order, the quasi judicial authority, while carrying out the mandatory direction of this Court should exercise its jurisdiction strictly in the manner in which it was directed to be done. A reading of paragraph 7 of the order of the first respondent impugned in this writ petition would sufficiently demonstrate the extreme position taken by the first respondent to comment about the order of this Court as though he was sitting in appeal over the judgment of this Court, which is totally impermissible. Paragraph 7 reads to the following effect.

"With due respect to the Hon'ble High Court, it is observed that vide para 6,7 and 8 as enumerated above, Government has distinguished and differed from the appellate authority's order when it goes on and records. "Therefore, in my considered view the removal of the impugned goods in the instant case for export would fall under sub-rule (3) of Rule 173H of the Central Excise Rules, 1944 and the claim for rebate on the basis of duty paid by M/s. Colour Chem Ltd ., Thane is admissible."

Hence Government would differ from the Hon'ble Court's observations in W.P.NO. 16769 of 1995 dated 23.2.1996 in this regard. "

(Emphasis supplied)

12. It can only be stated that the first respondent though was exercising quasi judicial power vested with him, unfortunately was not even aware of the basic discipline of obeying the order of this Court passed in a writ petition. Further in the subsequent paragraphs also, I find that the first respondent has only referred to certain earlier decisions of this Court in a different case and ultimately concluded by stating that the order of the third respondent dated 16.5.1 994 is liable to be set aside and the order of the second respondent dated 20.12.1993 should be restored. In fact the first respondent has not dealt with the revision petition of the Department with particular reference to the case of the petitioner, while passing the order impugned in the writ petition. There is absolutely no reasoning to state as to what is the question of law involved in the revision petition in order to entertain the same under Section 35EE of the Act. Therefore, looked at from any angle, absolutely no valid reasons shown for having allowed the revision of the respondent in the order of the first respondent impugned in this writ petition . The writ petition therefore, deserves to be allowed and the same stands allowed.

13. In the light of the observation made by the first respondent in paragraph 7 in the order impugned in this writ petition, it will have to be stated that the first respondent has exceeded his limit by making unwarranted comments about the order of this Court, apart from taking firm view that he is differing from the order of this Court. Such an observation made by the first respondent in the order impugned in the writ petition on the face of it would squarely fall within the definition of "criminal contempt" as defined under Section 2(c) of the Contempt of Courts Act, 1971. Section 2(c)

defines the Criminal Contempt as under:-
" 2(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which
(i) scandalises, or tends to scandalise, or lowers or tends to lower the authority of any court;or
(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"
14. In the light of the above said conduct of the first respondent namely Thiru.B.N.Das, Joint Secretary to the Government of India in exercise of his quasi judicial function vested with him under Section 35EE of the Act having proceeded by way of criminal contempt, I feel it appropriate to take cognizance of the said conduct of Thiru.B.N.Das and accordingly decide to issue appropriate contempt notice against Thiru.B.N.Das for having maligned the dignity of this institution by commenting upon the order of this Court passed in W.P.No.16769 of 1995 dated 23.2.1996. The Registry shall therefore, issue appropriate contempt notice to Thiru.B.N.Das, Joint Secretary to the Government of India, wherever he has now been posted and serving or even if he has retired from his service for his appearance before this Court by issuing appropriate show cause notice.
15. The writ petition stands allowed and the order impugned is set aside. The respondents are directed to comply with the order of the third respondent dated 16.5.1994 in Appeal No.133/94 (M) and refund the sum of Rs.6,84,590/- within one month from the date of production of copy of this order.

Website:Yes
Index:Yes

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To
1. The Joint Secretary
Govt. of India
Ministry of Finance
Department of Revenue
New Delhi 110 001

2. Maritime Collector
Office of the Collector of
Central Excise (Export claims)
'Sire Mansion'
621, Anna Salai
Madras 6.

3. The Collector of Central Excise
121, Nungambakkam High Road
Madras 600034

Copy to :-
The Sub-Assistant Registrar
Oridinal Side, High Court,
Madras.